

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

734D0473

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB77** - 1/28/00

Introduced by: Senators Rounds and Symens and Representatives Jaspers and Wilson

1 FOR AN ACT ENTITLED, An Act to regulate a manufacturer's right of first refusal.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Notwithstanding the terms of any franchise agreements, the manufacturer or franchisor may  
6 exercise a right of first refusal to acquire the motor vehicle dealer's assets or ownership if all of  
7 the following conditions are met:

8 (1) In order to exercise the right of first refusal, the manufacturer or franchisor shall  
9 notify the motor vehicle dealer in writing within sixty days of its receipt of the  
10 completed proposal for the sale or transfer and all related agreements;

11 (2) The exercise of the right of first refusal will result in the dealer receiving the same or  
12 greater consideration as the dealer has contracted to receive in connection with the  
13 proposed change of ownership or transfer;

14 (3) The proposed sale or transfer of the dealership's assets does not involve the transfer  
15 or sale to a member or members of the family of one or more dealers, or to a qualified  
16 manager with at least two years management experience at the dealership of one or

1 more of these dealers, or to a partnership or corporation controlled by such persons;

2 (4) The manufacturer or franchisor agrees to pay the reasonable expenses, including  
3 attorney fees which do not exceed the usual, customary, and reasonable fees charged  
4 for similar work done for other clients, incurred by the proposed owner or transferee  
5 prior to the manufacturer's or franchisor's exercise of its right of first refusal in  
6 negotiating and implementing the contract for the proposed sale or transfer of the  
7 dealership or dealership assets. Such expenses and attorney fees shall be paid to the  
8 proposed new owner or transferee at the time of closing of the sale or transfer for  
9 which the manufacturer or franchisor exercised its right of first refusal. No payment  
10 of such expenses and attorney fees is required if the new owner or transferee has not  
11 submitted an accounting of those expenses within thirty days of the dealer's receipt  
12 of the manufacturer's or franchisors written request for such an accounting. A  
13 manufacturer or franchisor may request such accounting before exercising a right of  
14 first refusal; and

15 (5) The dealer does not have any liability to any person as a result of a manufacturer or  
16 franchisor exercising a right of first refusal.

1    **BILL HISTORY**

2    1/18/00 First read in Senate and referred to Commerce. S.J. 70

3    1/27/00 Scheduled for Committee hearing on this date.

4    1/27/00 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 217